IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2803 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DEEPANKARKUMAR KARTHIKCHANDRA NANERJEE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2803 of 2002

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR PR ABICHANDANI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 08/07/2002

ORAL JUDGEMENT

1. Rule. Shri P.R.Abichandani, learned A.P.P. waives service of Rule.

2. This is second Bail Application filed by the petitioner - accused, who is a Doctor. His first Bail Application was permitted to be withdrawn with liberty to file fresh Bail Application before the trial Court after the charge sheet is submitted. After submission of the charge sheet the petitioner first approached the learned Judge by way of Criminal Miscellaneous Application No.492 of 2002 which was rejected by the learned Judge by well reasoned order running into 8 typed pages. Hence this second Bail Application.

3. Shri Patel, learned Counsel for the petitioner firstly submitted that before the charge sheet it was a case of the prosecution that the forged documents were recovered from the accused, but the panchnama shows that it was not recovered from the accused. This very submission advanced before the learned Judge was rightly turned down by the learned Judge by observing that nothing much turned out on it. Whether the forged document is recovered from the accused or not is not an important evidence against the petitioner - accused. Hence, the first submission of Shri Patel is rejected.

4. Shri Patel then submitted that the name of the accused was not disclosed in the complaint, but subsequently his name was disclosed in the statement of the witnesses. It is not necessary that in each and every case the name of the accused should be disclosed in the F.I.R. During the investigation the statements are recorded and if his name is disclosed and the role played by him then the accused cannot be granted bail.

5. The third submission made by Shri Patel was that the petitioner - accused is in jail since 6.1.2002, therefore, as per the Judgment of the Hon'ble Supreme Court in the case of ASHOK DHINGRA v/s. NCT, DELHI, reported in (2000) 9 SCC 533 the accused should be enlarged on Bail. He also relied upon an unreported Judgment of this Court (Coram : J.N.Bhatt) in Criminal Misc. Application No.2487 of 2002, decided on 27.6.2002, and prayed that the accused be enlarged on Bail as he has already remained in jail for six months.

6. In Ashok Dhingra's case it was a case of individual where Japanese National was cheated. In this case the offence is registered against the accused u/ss. 406, 465, 466, 467, 471, 120-B I.P.Code. It is not a case of individual cheating. Number of persons have been cheated. This type of offences are increasing like anything and if the Court does not take strict view in the matter then we would not know when it will stop.

Coming to the Bail order granted by this Court (Coram : J.N.Bhatt, J.) on 27.6.2002 in Criminal Miscellaneous Application No.2487 of 2002, it is clear that in that case the amount of victims of crime and the complainant were returned to them by A/c Pay Drafts, by the wife of accused. In that case the accused was in custody since 10.12.2001. Thus, for more than 8 months the accused remained in jail. That would definitely be a ground to consider the bail application of the accused. In the instant case no such facts are there. Therefore, in this case, there is no question of releasing the accused on bail.

7. Lastly it was submitted by Shri Patel that the complainant himself has submitted an application before the learned Sessions Judge at the time of hearing of the Bail Application which is at page : 7. The said application dated 23.1.2002 shows that the matter is compromised between the complainant and the accused and whatever misunderstanding between them are removed and the matter is settled outside the Court. This application was very much there when the earlier Bail Application was considered by both the Court, this Court and the trial Court. This goes to show that accused while remaining in jail also tried to tamper with the evidence. Hence the accused need not be released on bail on this ground also.

In view of above observation this Application is dismissed. Rule discharged.

sd/-

Date : July 08, 2002 (B.J.Shethna, J.)

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